

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF SAN JOSE REZONING APPROXIMATELY 80 ACRES OF REAL PROPERTY SITUATED IN DOWNTOWN SAN JOSE FROM THE LIGHT INDUSTRIAL, HEAVY INDUSTRIAL, INDUSTRIAL PARK, COMMERCIAL NEIGHBORHOOD, COMMERCIAL GENERAL, DOWNTOWN PRIMARY COMMERCIAL, PUBLIC, COMBINED INDUSTRIAL/COMMERCIAL, AND A(PD) PLANNED DEVELOPMENT ZONING DISTRICTS TO THE DC (PD) PLANNED DEVELOPMENT ZONING DISTRICT, AND ADOPTING A CODIFIED AMENDMENT TO TITLE 11, SECTIONS 11.24.070 AND 11.24.250, AND ADOPTING VARIOUS UNCODIFIED AMENDMENTS TO THE MUNICIPAL CODE ASSOCIATED WITH THE PLANNED DEVELOPMENT ZONING DISTRICT

WHEREAS, the City Council of the City of San José (“City”) adopted the Envision San José 2040 General Plan in 2011, which General Plan has been amended from time to time (“General Plan”), and which includes land use policies to focus new growth capacity in strategically identified “Growth Areas” to facilitate the development of higher-density, mixed-use, urban districts that can accommodate employment and housing growth while reducing environmental impacts of that growth by promoting transit use and walkability; and

WHEREAS, the General Plan identifies Downtown San José as a key “Growth Area” and includes policies intended to support the City’s economic, fiscal, environmental, and urban placemaking goals; and

WHEREAS, the City and Google LLC (“Project Sponsor” or “Google”) entered into a non-binding Memorandum of Understanding (“MOU”), dated December 4, 2018, to collaborate on development in Downtown San José based on a shared vision to create a vibrant, welcoming, and accessible urban destination consisting of a mix of land uses that are well-integrated with the intermodal transit station, adjacent neighborhoods, and Downtown, and shared goals to guide the development of Downtown San José; and

WHEREAS, following an extensive public process involving the City, residents of San José, and other stakeholders, Google submitted project applications for the Downtown West Mixed-Use Plan (the “Project” or “Downtown West”) on October 10, 2019, including proposed amendments to the General Plan (“General Plan Amendment”); a Project-specific amendment to the Diridon Station Area Plan (“DSAP Amendment”) that is separate from the City’s DSAP amendment effort; rezoning to a Planned Development Zoning District with a General Development Plan; and a Planned Development Permit; and

WHEREAS, on October 7, 2020, Google submitted additional Project applications for a Vesting Tentative Map, two Historic Landmark Boundary amendments to adjust the landmark boundaries of the San José Water Company and the Southern Pacific Depot Historic District, an amendment of an existing Historic Preservation Permit, a development agreement, and other permits and approvals required to implement the Project (File Nos. GP19-009, PDC19-039, PD19-029, HL20-004, HL20-005, HP20-002, PT20-027); and

WHEREAS, since October 7, 2020 Google has submitted updated Project applications in response to public comments and discussions with City staff for the General Plan Amendment; DSAP Amendment; rezoning to a Planned Development Zoning District, including a General Development Plan; a Planned Development Permit consisting of the Downtown West Design Standards and Guidelines (“DWDSG”), Downtown West Improvement Standards (“DWIS”), Conceptual Infrastructure Plan Sheets, and Downtown West Conformance Review Implementation Guide (“Implementation Guide” (collectively, the “Downtown West PD Permit”); Infrastructure Plan; amendment to the Historic Preservation Permit; Vesting Tentative Map; and development agreement; and

WHEREAS, the Project, which is located within the Downtown Growth Area Boundary and within the boundaries of the Diridon Station Area Plan (as such boundaries are amended by Resolution No. ____), advances the shared vision and the shared goals identified in the MOU by optimizing density and a mix of land uses, preserving existing

housing and creating new housing, creating broad job opportunities, pursuing equitable development, enhancing and connecting the public realm, pursuing excellence in design, enhancing sustainability and innovation, prioritizing community engagement regarding community benefits, and proceeding with timely implementation; and

WHEREAS, the Project advances a plan that re-envision a significant portion of the Diridon Station Area Plan as a mixed-use area that includes development of: up to 7.3 million gross square feet (gsf) of commercial office space; up to 5,900 residential units; up to 500,000 gsf of active uses (commercial retail/restaurant, arts, cultural, live entertainment, community spaces, institutional, childcare and education, maker spaces, non-profit, and small-format office space); up to 300 hotel rooms; up to 800 limited-term corporate accommodations; up to 100,000 gsf of event and conference center space; up to 4,800 publicly accessible commercial parking spaces and up to 2,360 unbundled parking spaces for residential use; a "District Systems" approach to delivery of on-site utilities, including designated infrastructure zones with up to two (2) on-site centralized utility plants totaling up to 130,000 gsf; one or more on-site logistics centers to serve the commercial on-site uses that would occupy a total of about 100,000 gsf; a total of approximately 15 acres of parks, plazas and open space, including areas for outdoor seating and commercial activity (such as retail, cafes, and restaurants), green spaces, landscaping, mid-block passages, riparian setbacks, and trails; and various other improvements to the public realm to improve transit access and pedestrian and bicycle circulation and facilitate connectivity, both within the site and to and from surrounding neighborhoods; and

WHEREAS, On December 30, 2019, Governor Gavin Newsom certified the Project as an environmental leadership development project under Public Resources Code § 21178 *et. seq.* the Jobs and Economic Improvement through Environmental Leadership Act of 2011 (Assembly Bill [AB] 900, as amended by Senate Bill 734 [2013], AB 246 [2017], and Senate Bill 7 [2021] which is currently pending approval in the California State Legislature); and

[WHEREAS, the Project has complied with requirements related to AB 900 as of the date of adoption of this Ordinance and would comply with post-adoption AB 900 requirements if AB 7 is adopted by the California State Legislature; and]

WHEREAS, community outreach for the Project has been ongoing since 2018 and has included over 50 meetings with members of the Diridon Station Area Advisory Group (SAAG), as well as over 100 community outreach events that provided the public with the opportunity to review the Project through a combination of in-person and digital engagement with residents, neighbors, business owners and employees, construction trades, and other stakeholders that included: public design workshops; booths at local and regional community events; presentations to and discussions with local neighborhood, business, and community/special interest associations and organizations; focus group discussions; engagement with faculty and students at local universities and schools; and other large and small events reaching communities within and around the Project site; and

WHEREAS, pursuant to Section 20.10.070 of the City of San José's Municipal Code, a Planned Development Zoning District is intended to be individually designed to meet the needs of the subject property, with the uses and requirements of the Planned Development Zoning District reflected in a General Development Plan adopted as part of the Planned Development Zoning District ordinance; and

WHEREAS, the requirements for a General Development Plan are set forth in Section 20.120.510 of the City of San José's Municipal Code; and

WHEREAS, all rezoning proceedings required under the provisions of Chapter 20.120 of Title 20 of the San José Municipal Code have been duly had and taken with respect to the real property hereinafter described; and

WHEREAS, on April 28, 2021, the Planning Commission of the City of San José held a duly noticed and advertised public hearing to receive oral and written testimony regarding

the planned rezoning and recommended to the City Council of the City of San José that the subject property be zoned Downtown West PD Zoning District; and

WHEREAS, the City Council of the City of San José held a duly noticed and advertised public hearing to receive oral and written testimony regarding the planned rezoning based on the recommendations from the City's Planning Commission and the City's Director of Planning, Building and Code Enforcement; and

WHEREAS, the Project's potential environmental impacts, including the proposed rezoning of the Project site, were analyzed in that certain Final Environmental Impact Report for the Downtown West Mixed-Use Plan ("FEIR"); and

WHEREAS, the City Council of the City of San José has considered, approved, and certified said FEIR and adopted related findings, a Mitigation Monitoring and Reporting Program and a Statement of Overriding Considerations pursuant to the California Environmental Quality Act (CEQA) under separate Resolution No. _____ on May ____, 2021 prior to making its determination on this rezoning ordinance or any other Project approvals; and

WHEREAS, this Ordinance approving the Downtown West PD Zoning District is a companion to the following approvals relating to Downtown West: override of the Santa Clara County Airport Land Use Commission's Comprehensive Land Use Plan inconsistency determination (Resolution No. ____); amendments to the General Plan including land use designations applicable to Downtown West (Resolution No. ____); amendments to the Diridon Station Area Plan (Resolution No. ____); the Development Agreement for the Downtown West Mixed-Use Plan (Ordinance No. ____); a Planned Development Permit (Resolution No. ____); amendments to Title 20 of the San José Municipal Code (Ordinance No. ____); approval of a Vesting Tentative Map (Resolution No. ____); amendment to the boundaries of two Historic Landmarks, the San José Water Company at 374 West Santa Clara Street and the Southern Pacific Depot Historic District (Resolutions No. ____ and ____); an amendment to Historic Preservation Permit (HP16-

002) (Resolution No. ____); approval of Major Encroachment Permits (Resolution No. ____); and approval of the Construction Impact Mitigation Plan (Resolution No. ____); and

WHEREAS, the City Council of the City of San José is the decision-making body for the proposed rezoning of the Project site to the Downtown West PD Zoning District; and

WHEREAS, the proposed rezoning is consistent with the designation of the site in the General Plan (as amended by Resolution No. ____), and is consistent with the goals, objectives, and policies of the General Plan and the Diridon Station Area Plan (as amended by Resolution No. ____); and

WHEREAS, the Project Sponsor proposes the possible development of a privately-owned, integrated electrical system capable of being disconnected from, and operated independently of, the primary electrical grid serving the City of San Jose ("Microgrid") which would reduce burdens on the Pacific Gas & Electric Company's (PG&E's) electrical network, improving the City's long-term capacity to grow as described in the General Plan; and

WHEREAS, the Microgrid would provide resilient infrastructure that together with the District Systems helps reduce carbon emissions by 22%, or the equivalent of taking approximately 4,100 cars off the road, and includes 7.8 megawatts of on-site solar generation, equivalent to the energy needed to power approximately 1,500 homes; and

WHEREAS, the Microgrid contributes to achievement of zero net new greenhouse gas emissions for the Project's construction and operations; and

WHEREAS, all the Project's infrastructure will be privately funded with no public subsidy; and

WHEREAS, the above-described environmental criteria are necessary to help achieve the City's policy of reducing San Jose's per capita energy use by 50% (Envision San Jose

2040 General Plan) and to pursue a Paris Accord-compliant pathway for the City (Climate Smart San Jose); and

WHEREAS, the Microgrid would not service projects outside of Downtown West and would implement rigorous service and performance criteria, including but not limited to fixing rates for residential and retail tenants, including safety standards for operations, and ensuring continuity of supply all as described in Resolution No. _____;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. The City Council finds that all the facts set forth in the foregoing recitals are true and correct and are incorporated herein by this reference.

SECTION 2. General Plan and DSAP Consistency.

1. **General Plan Consistency.** The subject site consists of the Downtown and Commercial Downtown land use designations on the General Plan Land Use/Transportation Diagram (as amended by Ordinance No. ____). The Downtown land use designation allows office, retail, service, residential and entertainment uses at very high intensities, unless incompatible with other major policies within the General Plan. The Downtown land use designation allows a density of up to 800 dwelling units per acre and FAR up to 30.0. The Commercial Downtown land use designation allows office, hotel, retail, service, and entertainment uses. Residential uses are not allowed in the Commercial Downtown designation. The Commercial Downtown land use designation allows FAR up to 15.0.

The Project conforms to the General Plan goals and policies for the reasons set forth in Exhibit "B" to Resolution No. [____] approving the General Plan Amendment, which findings are incorporated herein by reference.

2. **Diridon Station Area Plan Consistency.** The subject site is within the boundaries of the Diridon Station Area Plan ("DSAP") as amended by Resolution No. ____.

The Project is consistent with the following key DSAP goals:

- a. Create an urban district in the Station Area that maximizes height potential. The Station Area should accommodate a mix of uses including commercial and office, residential and active uses.

The Project consists of a complementary mix of uses that create a vibrant, transit-oriented urban neighborhood and destination. The development program optimizes development density, which consists of up to 7.3 million gsf of commercial office space; up to 5,900 residential units; up to 500,000 gsf of active uses (commercial retail/restaurant, arts, cultural, live entertainment, community spaces, institutional, childcare and education, maker spaces, non-profit, and small-format office space); up to 300 hotel rooms; up to 800 limited-term corporate accommodations; up to 100,000 gsf of event and conference centers; a "District Systems" approach to delivery of on-site utilities, including designated infrastructure zones with up to two (2) on-site centralized utility plants totaling up to 130,000 gsf; one or more on-site logistics centers to serve the commercial on-site uses that would occupy a total of about 100,000 gsf; a total of approximately 15 acres of parks and open spaces. The DWDSG includes standards and guidelines that distribute land uses throughout the Project site in a manner that is compatible with adjacent uses, surrounding neighborhoods, and adjacent open spaces (DWDSG Chapter 3). Residential uses are generally located near existing residential neighborhoods and office uses are generally located along the existing rail track. DWDSG standards (Chapter 3) require certain land uses on certain development blocks, while allowing for flexibility on other blocks to promote the development of Downtown West into a mixed-use, transit-oriented site. The DWDSG also includes standards and guidelines that distribute active uses throughout Downtown West to create a vibrant public realm. Active use shall be required, at a

minimum, along 30 percent of the ground floor frontage of certain blocks to activate streets and open spaces within Downtown West.

The Project also maximizes height potential within the Project Site. The City Council approved a policy to allow for greater height limits in Downtown, including within the DSAP, in March 2019. The Project proposes allowable building heights that range from 160 feet to 290 feet above ground level (AGL), contingent on required Federal Aviation Administration (FAA) review clearance. The DWDSG (Section 5.6) establishes standards and guidelines that establish maximum building heights throughout the Project site. The Project maximizes allowable building heights, while in certain blocks setting heights lower than the maximum height only as needed to establish variation in the skyline and to better respond to contextual adjacencies, including historic resources, existing single-family residential neighborhoods, and Los Gatos Creek and the open space program. For instance, the DWDSG establishes standards that limit building heights at Creekside Walk and on certain blocks to respond to contextual adjacencies.

- b. Establish and strengthen connections to surrounding districts and within the planning area for pedestrians, bicyclists, and motorists, with emphasis on east-west connectivity across SR-87 and the rail corridor.

The Project, located adjacent to Diridon Station, enhances connections to nature, surrounding neighborhoods, and the greater Bay Area region, by strengthening links to Downtown and surrounding neighborhoods. The Project includes improvements to the public realm, including maximizing space for active streetscape - which includes sidewalk, bike lanes and planting areas - to optimize connections to nearby regional transit services. Streets designed in Downtown West prioritize pedestrians and bicyclists with generous sidewalks, protected bike lanes, and traffic calming measures in alignment with the City's Complete Streets Design Standards and Guidelines ("CSDSG"). The Project's

proposed street network extends the existing street network to enhance connections to the surrounding neighborhood and proposes mid-block passages to optimize walkability. The Project also proposes improvements to east-west connectors, including West Santa Clara Street, West San Fernando Street, Park Avenue, West San Carlos Street, West Julian Street, West St. John Street (new street), West Post Street (new street), and Auzerais Avenue, to provide pedestrian and bicycle priority streets to link neighborhoods east and west of the rail corridor.

The DWDSG (Chapter 6) includes standards and guidelines for the design and development of Downtown West streets that prioritize pedestrians and cyclists and support walking, biking, and public access and ridership. The DWDSG standards include requirements to extend the street network, including Cahill Street north of West Santa Clara Street to North Montgomery Street; Cahill Street south of West San Fernando Street to Park Avenue; West St. John Street to the Cahill Street extension; West Post Street between Cahill Street and Barack Obama Boulevard; North Montgomery Street north of Cinnabar Street to North Autumn Street; and North Autumn Street from the Union Pacific Railroad to Lenzen Avenue. The DWDSG also establishes standards and guidelines for the sidewalk, including minimum overall active streetscape widths and other requirements related to the various sidewalk zones (e.g. frontage zone, through zone, furnishing zones), that enhance pedestrian safety and support safe crossing. The DWDSG establishes standards and guidelines for east-west connectors that link Downtown West to adjacent neighborhoods. East-west connectors within Downtown West include West Santa Clara Street, West San Fernando Street, Park Avenue, West San Carlos Street, West Julian Street, Auzerais Avenue and new street extensions such as West St. John Street and West Post Street.

- c. Prioritize pedestrian circulation and transit.

The Project prioritizes pedestrian space within streets to promote walkability. The street network supports walking, biking, and public transit access and ridership to and from Downtown West. The pedestrian network is enhanced with active street elements, protected bike lanes, and dynamic lanes. The DWDSG includes standards and guidelines for the various sidewalk zones to improve pedestrian experience and increase safety for people walking and biking within Downtown West and to adjacent neighborhoods. The DWDSG further enhances transit access and ridership by leveraging the Project's proximity to Diridon Station, a regional transit hub. The DWDSG includes standards for anticipated transit access streets, shuttle routes, and shuttle stops to provide safe and convenient connections to and from the Project site.

d. Provide a range of commercial and residential uses.

The Project provides a balanced mix of commercial and residential uses that create a vibrant, mixed-use transit-oriented neighborhood. Commercial uses include up to 7.3 million gsf of commercial office space; up to 500,000 gsf of active uses (commercial retail/restaurant, arts, cultural, live entertainment, community spaces, institutional, childcare and education, maker spaces, non-profit, and small-format office space); up to 300 hotel rooms; and up to 100,000 gsf of event and conference space. Other commercial land uses are distributed throughout the Project to be compatible with adjacent uses and the surrounding neighborhood.

The Project proposes up to 5,900 residential units. Residential uses are generally located near existing residential neighborhoods within areas with the Downtown land use designation as further set forth in the DWDSG. The Project also provides for a robust affordable housing program, as further set forth in the Development Agreement for the Downtown West Mixed-Use Plan. The Project's affordable housing program, which assumes development of 4,000 residential units, supports the production of up to 1,000 affordable housing

units, and furthers Google's and the City's shared goal that development within the DSAP results in twenty-five percent (25%) of all residential units as affordable housing. The DWDSG (Chapter 3 Land Use) includes standards that intentionally distribute a mix of land uses throughout the site to relate to context and to create an active public realm. The DWDSG requires certain land uses on certain development blocks, while allowing for flexibility on other blocks to promote the development of Downtown West into a mixed-use, transit-oriented site. The DWDSG also includes standards and guidelines that distribute active uses - which include commercial, retail/restaurant, arts, cultural, live entertainment, community center, institutional, childcare and education, maker spaces, non-profit, and small-format office spaces - throughout Downtown West to create a vibrant public realm. Active uses are required, at a minimum, along 30 percent of the ground floor frontage of certain blocks to activate streets and open spaces within Downtown West.

- e. Enhance and expand access to open space and recreational opportunities in the Station area and establish an open space system integrated with Los Gatos Creek and Guadalupe River Park.

The Project will provide a total of approximately 15 acres of parks and open space, consisting of both City-Dedicated Open Space (Los Gatos Creek Multi-Use Trail and City-Dedicated Park) and Project Sponsor-Owned Open Space (Privately-Owned Public Park, Semi-public open space, Los Gatos Creek Riparian Setback, Los Gatos Creek Riparian Corridor, Mid-Block Passages).

The Project will enhance and expand access to open space as the Project's open space program includes a park or plaza at nearly every major intersection, near each neighborhood, and no more than one block away from any location in the Project. The open space program integrates with the surrounding communities and provides areas for outdoor seating and commercial activity (such as retail, cafes, and restaurants), green spaces, landscaping, mid-block

passages, riparian setbacks, and trails. The open space network also improves access and connectivity along the riparian corridors and supports biodiversity within a high-density urban context through ecologically beneficial landscape design. As set forth in the DWDSG, the design character of open spaces ranges from natural to more urban, with each open space relating to its adjacent surroundings.

- f. Activate the streets, parks, and Station with art that engages visitors and residents alike. Integrate art into infrastructure to humanize and enliven standard features.

Art is encouraged throughout Downtown West to engage visitors and residents, help share gathering places, and to be used as a tool for learning about culture and history and the regional nature and creek ecology. The DWDSG includes standards, guidelines, and contextual considerations that promote the use of art as appropriate within the Project site. For instance, the Project includes mid-block passages to enhance pedestrian connectivity and optimize walking between neighborhoods. The DWDSG includes guidelines that encourage art in mid-block passages and contextual considerations to incorporate different forms of art into certain mid-block passages to further activate the space. The DWDSG also includes guidelines that encourage the use of art to add a sense of destination, inspire thought and dialogue, commemorate important individuals and events, and connect to the natural environment. Within Downtown West, art is intended to be used as a tool not only for activating streets, parks, and the Diridon Station area, but to engage visitors and residents by conveying information about the culture and history of the City. While art within Downtown West is encouraged, the DWDSG includes standards regarding art within the riparian setback to protect against environmental disruption within the riparian setback along Los Gatos Creek and Guadalupe River.

- g. Disperse parking in different locations in the planning area and beyond to ensure easy walking access to destinations.

The Project provides safe, convenient, and strategically located parking throughout Downtown West. Off-street parking is intended to support a walkable environment and Downtown West includes public, district-serving garages near entries to the site that service office, active use, and SAP Center events. Additional parking is located within individual residential buildings or clustered buildings. The Project allows up to 4,800 publicly accessible commercial parking spaces and up to 2,360 unbundled parking spaces for residential use. The GDP establishes residential parking standards and a Required Parking Ratio for commercial/public parking as further described in Exhibit K of the Development Agreement. The DWDSG includes standards and guidelines for parking facilities within Downtown West to provide for vehicular access from adjacent streets, and to design parking garages as an integrated component of a building's overall design. The DWDSG also includes off-street parking standards that promote shared district parking that is accessible to the various mixed uses within Downtown West, nearby transit and the SAP Center.

SECTION 3. Development Regulations Applicable to the Downtown West PD Zoning District.

- A. The Downtown West PD Zoning District consists of approximately 80 acres and is generally bounded by Lenzen Avenue and the Union Pacific Railroad (UPRR) tracks to the north; North Montgomery Street, Los Gatos Creek, the Guadalupe River, Barack Obama Boulevard (formerly South Autumn Street and Bird Avenue), and Royal Avenue to the east; Auzerais Avenue to the south; and Diridon Station and the Caltrain railroad tracks to the west ("Downtown West PD Zoning District").

- B. The subject property referred to in this section is all that real property situated in the County of Santa Clara, State of California, described in Exhibit "A" attached hereto and incorporated herein by this reference.
- C. Development and use of property within the Downtown West PD Zoning District shall be subject to the land use regulations and development standards reflected in the Downtown West General Development Plan ("GDP"), dated _____, as it may be amended from time to time. The Downtown West PD Zoning District consists of three (3) sub-areas, identified as Sub-Area 1, Sub-Area 2, and Sub-Area 3 in the GDP. The locations of the sub-areas are generally depicted in the GDP and consist of the real property described in Exhibit A.
- D. The permitted uses, development standards, and use regulations applicable to the Downtown West PD Zoning District shall be those established in the GDP, which authorizes transfers of square footage and conversion of land uses between Sub-Areas subject to the conditions and criteria established in the GDP, including but not limited to compliance with CEQA.
- E. The regulations and standards established in the Downtown West PD Zoning District and GDP, adopted by this Ordinance, shall control and govern development of the Project within the Downtown West PD Zoning District notwithstanding any contrary provision in Title 20, including but not limited to any greater restrictions on the use of buildings or premises, height of buildings, or open space requirements in Title 20.
- F. The Downtown West Planned Development Permit dated _____, as it may be amended from time to time ("Downtown West PD Permit"), approved by Resolution No. _____, effectuates the Downtown West PD Zoning District pursuant to Section 20.60.020 of the Municipal Code. The Downtown West PD Permit consists of the following components: Downtown West Design Standards and Guidelines ("DWDSG"), Downtown West Improvement Standards ("DWIS"), Conceptual

Infrastructure Plan Sheets, and the Conformance Review Implementation Guide (“Implementation Guide”), as they may be amended from time to time (collectively, these documents are referred to as the “Downtown West PD Permit”).

- G. Sub-Area 2, as generally depicted in the GDP, is included within the boundaries of the Downtown West PD Zoning District but is not included within the Downtown West PD Permit. Development within Sub-Area 2 shall be subject to the requirements of the DC Downtown Commercial zoning district, which shall continue to apply to Sub-Area 2 until the issuance of a Planned Development Permit for Sub-Area 2. Any subsequent Planned Development Permit for Sub-Area 2 shall conform to the requirements in the GDP, including the specific development standards applicable to Sub-Area 2 set forth on Sheet 3.02a of the GDP, as those may be amended from time to time. Development of Sub-Area 2 shall also be subject to the Conditions of Approval to the Downtown West PD Permit.
- H. The GDP establishes the commercial and residential parking requirements for development within the Downtown West PD Zoning District. The project sponsor shall provide publicly accessible off-street parking spaces serving new office development in compliance with the Required Parking Ratio as set forth in the GDP and the Development Agreement, approved by Ordinance No. _____. Residential parking requirements shall be provided in accordance with the standards in the GDP. The GDP also establishes the standards and requirements for bicycle parking in the Downtown West PD Zoning District notwithstanding anything to the contrary in Title 20.
- I. The development of the Project is intended to occur in phases and this Ordinance authorizes and establishes the Downtown West PD Zoning District Design / Conformance Review (“Conformance Review”) process, a subsequent review process for the design and development of vertical improvements, open space, and horizontal improvements within the Downtown West PD Zoning District.

- J. The Conformance Review process, which is further described in the GDP and Implementation Guide, dated _____, and is a component of the Downtown West PD Permit, both as may be amended from time to time, authorizes the Director of Planning, Building, and Code Enforcement (“Director of PBCE”) to review and approve Conformance Review applications for vertical improvements and open space for consistency with the General Plan, GDP, and applicable Planned Development Permit, and authorizes the Director of Public Works (“PW Director”) to review 35%, 65%, and 95% improvement plan sets for consistency with the GDP, applicable Planned Development Permit, Infrastructure Plan, and other applicable Project approvals and documents. The submittal of 35%, 65% and 95% improvement plans during the Conformance Review process for horizontal improvements are interim plan checks prior to the project sponsor’s formal submittal of its applications for a phased final map and 100% improvement plans for the City’s review and approval pursuant to the procedures described in Title 19 of the San José Municipal Code and any ordinances governing the design and permitting of subdivisions and improvements applicable to the Downtown West PD Zoning District.
- K. Development within the Downtown West PD Zoning District shall be allowed pursuant to the standards and requirements set forth in this Ordinance and the GDP, and shall not be subject to provisions of Title 20 that conflict with, or would interfere with development and occupancy of the real property subject to the Downtown West PD Zoning District, including but not limited to the following:
1. The Director of PBCE’s determination on a Conformance Review application shall occur at a Conformance Review Hearing (as set forth in the Implementation Guide), which may be held on dates when Director of PBCE Hearings is also scheduled to occur for other matters. A Conformance Review Hearing shall not constitute a “Director’s hearing” under Section 20.100.220 and Table 20-260) Appeal Hearing Body) of Title 20 of the Municipal Code. The Director of PBCE’s decision on a

Conformance Review application shall not be subject to appeal to the Planning Commission or City Council. The decision of the Director of PBCE is final and shall not be appealable to any other approval body within the City.

2. The GDP for the Downtown West PD Zoning District establishes the maximum allowable building heights for development within the Downtown West PD Zoning District. The GDP further establishes a process where the maximum building heights for individual buildings in the Downtown West PD Zoning District may be increased without amendment to the GDP, provided that (a) such increase correlates to an increase in maximum allowable height authorized by the FAA and approved by City Council following review by the Santa Clara County Airport Land Use Commission, if applicable, and (b) Director of PBCE conducts environmental review of the building's proposed height increase to determine compliance under CEQA. The provisions of Chapter 20.85 of Title 20 shall not apply to the Downtown West PD Zoning District.
3. The GDP establishes the land uses authorized within the Downtown West PD Zoning District. The GDP identifies whether land uses are: Permitted; a Conditional Use that requires the approval of a subsequent planned development permit; a Special Use that requires the approval of a subsequent planned development permit; and authorized upon the issuance of an Administrative Permit. Certain uses require compliance with conditions of approval that are set forth in the GDP. The land use regulations in the GDP shall control and apply within the Downtown West PD Zoning District notwithstanding anything to the contrary in Title 20.
4. The term of an Administrative Permit issued within the Downtown West PD Zoning District shall be a minimum of five (5) years, subject to a five (5) year extension. A permittee may request the renewal of an Administrative Permit

pursuant to the terms of the GDP. This shall supersede Section 20.100.1250 of Title 20 for development within the Downtown West PD Zoning District.

5. The GDP authorizes special events and limited-term uses (as defined in the GDP) on private property within the Downtown West PD Zoning District, without any further authorization, permits, or approvals from the Director of PBCE or any other City department, except to the extent a permit is required under the San Jose Municipal Fire Code or the event includes amplified noise that exceed 60 decibels (dBA) based on an hourly average noise level (hourly L_{eq}). The GDP establishes a process for obtaining a Fire Permit for Special Events and Limited-Term uses on private property, which shall apply to the Downtown West PD Zoning District. The GDP establishes a process for obtaining an Amplified Sound Permit for Special Events and Limited-Term Uses that include amplified noise that exceeds 60 dBA based on an hourly L_{eq} , which shall apply to the Downtown West PD Zoning District. The GDP also establishes a process for coordinating review of certain Special Events with other City departments (Police Department and Department of Transportation).
6. The GDP establishes specific residential parking standards applicable within the Downtown West PD Zoning District. The Development Agreement and the GDP also establishes specific commercial/public parking requirements applicable to the Downtown West PD Zoning District (the "Required Parking Ratio" as defined and described in the GDP and Development Agreement, approved by Ordinance No. ____). The specific parking standards set forth in the GDP and Development Agreement shall apply and govern development within the Downtown West PD Zoning District notwithstanding anything to the contrary in Title 20. The GDP also establishes the standards and requirements for bicycle parking in the

Downtown West PD Zoning District notwithstanding anything to the contrary in Title 20.

- L. Concurrent with the approval of this Ordinance, the City Council adopted codified Ordinance No. ____, which amends Title 20 to include a new Section 20.70.700. It is the Council's intent that Section 20.70.700, this Ordinance, the San Jose Municipal Code, and all Project approvals and documents should be construed in a manner that fully implements development of the Project consistent with the standards, requirements and procedures set forth in the Downtown West PD Zoning District and the GDP.
- M. The GDP is on file in the office of the Director of PBCE and is available for inspection by anyone interested therein and said GDP is by this reference adopted and incorporated herein the same as if it were fully set forth herein.
- N. The San José Downtown Design Guidelines and Standards ("DDG") and the Complete Streets Design Standards and Guidelines ("CSDSG") shall continue to apply to the development within the Downtown West PD Zoning District unless a DDG or CSDSG standard or guideline has been expressly superseded by the DWDSG. This Ordinance hereby expressly authorizes the DWDSG to supersede DDG and CSDSG standards and guidelines as specified in the DWDSG.

SECTION 4. Codified Amendment of Title 11 and Uncodified Amendments to Titles 15, and Title 21 of the City of San José Municipal Code.

The following provisions of the San José Municipal Code shall be amended as set forth in this section.

- A. Codified Amendments to Title 11.** Sections 11.24.070 and Section 11.24.250 of Title 11 of the San José Municipal Code require Barack Obama Blvd. (formerly Autumn Street) between Park Avenue and Santa Clara Street and Montgomery

Street between Santa Clara Street and Park Avenue to be one-way streets. The Project includes improvements to Barack Obama Blvd. and Montgomery Street to allow for vehicles to travel south and north.

1. Section 11.24.070 shall be amended, as set forth below, upon the Project Sponsor's completion and offer of dedication of improvements of Barack Obama Blvd. between Park Avenue and Santa Clara Street to allow for vehicles to travel south and north.
2. Section 11.24.250 shall be amended, as set forth below, upon the Project Sponsor's completion and offer of dedication of improvements in that portion or component of Montgomery Street to allow for vehicles to travel south and north.
3. Upon the satisfaction of the conditions above, Sections 11.24.070 and 11.24.250 of Title 11 of the San José Municipal Code shall be deemed amended by this Ordinance in the City of San José Municipal Code as follows:

§ 11.24.070 Barack Obama Blvd. ~~Autumn Street~~: "Vehicles shall be permitted to travel ~~driven from south and to north only on Autumn Street~~ Barack Obama Blvd. between Park Avenue and Santa Clara Street.

§ 11.24.250 - Montgomery Street: Vehicles shall be permitted to travel ~~driven from north and to south only on Montgomery Street~~ between Santa Clara Street and Park Avenue.

4. After receiving written confirmation from the Director of Public Works and the Office of the City Attorney that the conditions above have been satisfied, the City Clerk is hereby directed to codify, or cause to be codified, the amendments to Sections 11.24.070 and Section 11.24.250 of Title 11 of the San José Municipal Code as set forth above.

B. Uncodified Amendment of Title 15. Notwithstanding anything to the contrary in Section 15.32.020 and elsewhere in Title 15 of the Municipal Code, the following shall apply to development of the Project:

1. The City Council is hereby empowered to grant a franchise to any person whether operating under any existing franchise or not, to construct or use poles, wires, conduits or appurtenances for transmitting and distributing electricity for any purpose, or to lay or use pipes or appurtenances for transmitting and distributing gas for any purpose across the public streets, as the same now or may hereafter exist within said city, upon terms as are provided in the applicable provisions of the Charter, and may in such franchise impose other additional terms not in conflict with said Charter or this chapter, whether governmental or contractual in character, as in the judgement of the council are to the public interest.
2. Notwithstanding any other provision of the City of San José Municipal Code, no franchise shall be required for any person to use wires, conduits or other appurtenances for transmitting and distributing electricity to the extent that such transmission and distribution: (i) is not deemed to be subject to regulation as a public utility by the California Public Utilities Commission; (ii) occurs pursuant to an integrated electrical system capable of being disconnected from, and operated independently of, the primary electrical grid serving the City of San José; and (iii) is limited to the Downtown West PD Zoning District as described in this Ordinance. As such, the Council approves these specific requirements for the Project based on the following:
 - a. Downtown West will be a highly sustainable and environmentally responsible project. District Systems will help underpin the environmental performance of the Project, reducing the burden on existing networks and increasing resilience. This increased performance will be achieved by consolidating plant systems and connecting resources within the Project's

boundary. By connecting resources, the Project maximizes sustainability outcomes, as the Centralized Utility Plant (CUP) and accompanying microgrid run at higher efficiencies, reducing carbon emissions and potable water needs and also help achieve broader objectives including advancing the City's sustainability goals on GHG emissions, climate adaptation and resilience. Further, they also establish a system that is innovative and replicable.

- b. To Project will use utilidors, which are private service structures, to connect the private networks to the buildings. The utilidors will cross streets at a subterranean level in designated zones as depicted on the Conceptual Encroachment Plan Sheets (Resolution No. _____) in order to minimize impacts and disruptions on the City's streets. The networks and services will not be publicly dedicated and will serve the Downtown West area only.

C. Uncodified Amendment of Title 21. Notwithstanding anything to the contrary in Title 21 of the San José Municipal Code, the CEQA procedures set forth in the GDP shall apply to all subsequent approvals associated with development of the Project, including the following:

1. The Project Sponsor shall provide information to support a determination whether the City's approval of development under the Conformance Review would be consistent with any applicable requirements of CEQA. If necessary, to support that determination, the Project Sponsor shall provide any required technical studies, either associated with any subsequent CEQA review or otherwise required as part of mitigation to reduce identified impacts.
2. The Director of PBCE shall be responsible for making a determination, reflecting the City's independent judgment, regarding the appropriate environmental clearance for a Conformance Review application. The Director of PBCE shall determine whether a Conformance Review application shall be

approved in reliance on the Downtown West Final Environmental Impact Report (Final EIR), or in reliance on an Addendum to the Final EIR, or if a Supplemental or Subsequent EIR is required to support any approval. The Director of Public Works shall be responsible for making a determination that discretionary approvals in connection with the Horizontal Conformance Review process (DWIS Modification and amendments to Infrastructure Plan) comply with the requirements of CEQA. The CEQA procedures applicable to subsequent approvals set forth in this Ordinance shall similarly apply to the Director of Public Works.

3. The Director of PBCE shall have jurisdiction over a Conformance Review application if the Director of PBCE determines that a Conformance Review application can be approved in reliance on the Final EIR (without or with an Addendum), or that a Supplemental or Subsequent EIR, if required, does not identify any new or substantially more severe significant environmental effects, following mitigation, than those identified in the Final EIR.
4. Pursuant to this Ordinance, the Director of PBCE's determination regarding the appropriate form of environmental clearance for a Conformance Review application shall not be appealable to the Planning Commission, the City Council, or any other City decision-making body. Pursuant to this Ordinance, the Director of PBCE's reliance on an Addendum to, a Supplemental or Subsequent EIR to, or a Determination of Consistency with the Final EIR in support of a Conformance Review application also shall not be appealable to the City Council, or any other City decision-making body.
5. If the Director of PBCE determines that a Supplemental or Subsequent EIR is required pursuant to CEQA and identifies one or more new or substantially more severe significant environmental effects, following mitigation, than those identified in the Final EIR, the Planning Commission shall hold a public hearing on the Conformance Review application and make a recommendation to the

City Council regarding certification of the Supplemental or Subsequent EIR. The City Council shall thereafter hold a public hearing to consider certification of the Supplemental or Subsequent EIR for the subject Conformance Review application.

6. The table below summarizes the decision-making authority for each of the potential CEQA determinations in connection with a Conformance Review approval or any other subsequent approval for Downtown West (Subsequent Approval), and whether each determination is appealable.

Decision / Approval	Decision Maker	Appealability
Determination regarding scope of CEQA compliance (whether Subsequent Approval may be approved in reliance on the Downtown West Final EIR, Addendum to the Final EIR, or Subsequent or Supplemental EIR)	Director of PBCE	No, pursuant to this Ordinance.
Determination that project proposed in Conformance Review or other Subsequent Approval application are within the scope of the Downtown West Final EIR	Director of PBCE	No, pursuant to this Ordinance.
Determination that project may be approved in reliance on an Addendum to the Downtown West Final EIR	Director of PBCE	No, pursuant to this Ordinance.
Certification of Subsequent or Supplemental EIR for project that does not identify any new or substantially more severe significant environmental effects, following mitigation, that those	Director of PBCE Sources: Pub. Res. Code § 21151(c); Muni Code § 21.07.040.	Yes. Under CEQA, if a nonelected decision-making body of a local lead agency certifies an EIR, that certification may be appealed to the agency's elected decision-making body (i.e., City Council).

identified in the Downtown West Final EIR		
Certification of Subsequent or Supplemental EIR for project that identifies one or more new or substantially more severe significant environmental effects, following mitigation, that those identified in the Downtown West Final EIR.	Planning Commission Recommendation; City Council Certification Source: Muni Code § 20.100.220, footnote 1	N/A because City Council becomes the initial decision maker under these circumstances.

SECTION 4: Exceptions to Section 13.05.050 of the City of San José’s Municipal Code and the Complete Streets Design Standards and Guidelines (CSDSG)

1. Chapter 13.05 of the City of San José’s Municipal Code generally requires the implementation of the Complete Streets Design Standards and Guidelines (“CSDSG”). Section 13.05.050 establishes right-of-way widths for streets listed in Table 1 of Section 13.05.070. Section 13.05.040 provides for exceptions to compliance with the CSDSG in certain circumstances and the CSDSG itself authorizes deviations from CSDSG guidelines.
2. The GDP establishes the total right-of-way width for public streets within Downtown West notwithstanding anything to the contrary under Title 13 of the Municipal Code. Final street design for public streets will be described in improvement plans and approved as part of the final map and improvement plan process. The Downtown West PD Permit, including the DWDSG, provides that the development of streets within Downtown West is subject to the standards and guidelines in the CSDSG unless expressly superseded by the DWDSG. Superseded CSDSG standards and guidelines are identified in Appendix E (CSDSG Standards and Guidelines That Do Not Apply to Downtown West) of the DWDSG. As such, the City approves an exception to compliance with those CSDSG standards identified in Appendix E of the DWDSG including standards

related to right-of-way widths, minimum widths of travel lanes, and sidewalk zones, pursuant to its authority under Section 13.05.040 and the CSDSG, for the reasons set forth in Appendix E of the DWDSG, which are herein incorporated by reference.

SECTION 5. CEQA Determination

1. The City, acting in its capacity as lead agency for the Project, has prepared a Final Environmental Impact Report ("FEIR") pursuant to and in accordance with the California Environmental Quality Act ("CEQA"). The FEIR is comprised of the Draft Environmental Impact Report for the Project ("Draft EIR") and all appendices thereto, comments and responses to comments on the Draft EIR, and the revisions to the Draft EIR. The FEIR analyzed the potential environmental impacts from all changes proposed as part of the Project, including the proposed rezoning of the subject area to the Downtown West Planned Development Zoning District.
2. On April 28, the Planning Commission of the City of San José reviewed the FEIR and recommended that the City Council certify the FEIR for the Project.
3. On ____, the City Council independently reviewed and analyzed the FEIR and other information in the record, and adopted Resolution No. ____, certifying the FEIR and adopting findings under CEQA, the Mitigation Monitoring and Reporting Program and a Statement of Overriding Considerations in connection with the Project, which resolution is on file with the Director of Planning, Building and Code Enforcement at the Director's office at 200 East Santa Clara Street, 3rd Floor Tower, San José, California, 95113, and available on the Planning Department's website.

SECTION 6. PG&E Property and Subsequent Actions

- A. The Downtown West PD Zoning District, as further described in Exhibit “A”, currently includes an approximately 0.18 acre-parcel, described as “Parcel #1” in the deed recorded November 25, 1926, in Book 797, page 336 of Santa Clara County Records, generally located at the intersection of Cahill Street and West San Fernando (“PG&E Property”), which is owned by Pacific Gas & Electric Company (“PG&E”) and is subject to the jurisdiction of the California Public Utilities Commission (“CPUC”) under California Public Utilities Code Section 851. PG&E authorized the inclusion of the PG&E Property within the boundary of the Downtown West PD Zoning District provided that CPUC subsequently confirms that the PG&E Property may be included within the proposed Downtown West PD Zoning District. This Ordinance shall not become effective as to the PG&E Property and the City shall not grant any Subsequent Approvals (as defined in the Development Agreement) over the PG&E Property until Google provides documentation to the Director of PBCE demonstrating that CPUC has provided the requested authorization.

The zoning for the PG&E Property shall remain Light Industrial until Google provides documentation to the Director of PBCE demonstrating that CPUC has provided the requested authorization. If Google fails to provide documentation of CPUC’s consent within twenty-four (24) months of the effective date of this Ordinance, PG&E’s authorization to include the PG&E Property within the Downtown West PD Zoning District shall be deemed withdrawn. Upon a request from Google, and subject to the written consent of PG&E, the Director of PBCE may extend the twenty-four month period described in the preceding sentence for an additional period not to exceed twelve months. In the event Google does not provide timely documentation of CPUC’s consent, Google shall update the boundaries of the Downtown West PD Zoning District shown in the GDP to exclude the PG&E Property. Notwithstanding anything to the contrary in Section 20.120.510 of the San Jose Municipal Code, such an update to the GDP may be administratively approved by the Director of PBCE.

- B. All that real property described in Exhibit "A" as Parcels 1-3 is hereby rezoned to the Downtown West PD Zoning District. The base district zoning of the Downtown West PD Zoning District shall be DC Downtown Commercial. The Planned Development zoning of the subject property shall be the GDP, which City Council finds is consistent with all requirements set forth in Section 20.120.510.
- C. The zoning district map of the City is hereby amended accordingly.
- D. The City Council authorizes the Director of PBCE to make minor changes to this Ordinance and its attachments, in consultation with the City Attorney, such as the making of corrections including grammatical and typographical changes, minor additions or edits to ensure consistency across Project approvals and documents (e.g. correcting cross-references to other Project approvals or documents), or other non-substantive changes, as necessary or appropriate, to implement this Ordinance and to effectuate the City's performance thereunder.

SECTION 7. Effective Date.

This Ordinance shall take effect thirty (30) calendar days after adoption.